

2009 DRAFTING REQUEST**Bill**Received: **04/21/2009**Received By: **gmalaise**Wanted: **As time permits**

Identical to LRB:

For: **Robert Jauch (608) 266-3510**By/Representing: **Anne Sappenfield**This file may be shown to any legislator: **NO**Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - abuse and neglect
Children - out-of-home placement**Extra Copies: **Anne Sappenfield, LC,
Cindy McGinnis (Grisgby)**Submit via email: **YES**Requester's email: **Sen.Jauch@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:No specific pre topic given

Topic:Disclosure of information relating to death or near death of child due to abuse or neglect

Instructions:See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /? | gmalaise 05/07/2009 | bkraft 05/11/2009 | | _____ | | | S&L |
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| /P2 | gmalaise 08/31/2009 | bkraft 09/01/2009 | phenry 09/02/2009 | _____ | cduerst 09/02/2009 | | S&L |

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| /2 | gmalaise 09/11/2009 | wjackson 09/11/2009 | mduchek 09/11/2009 | _____ | sbasford 09/11/2009 | cduerst 09/14/2009 | |

FE Sent For: "1/2" @ intro. 9/21/09

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2009 DRAFTING REQUEST

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Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - IND 7-9485**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - abuse and neglect**
Children - out-of-home placement

Extra Copies:

Submit via email: **YES**

Requester's email: **sen.jauch@legis.wisconsin.gov**

Carbon copy (CC:) to: **cindy.mcginnis@legis.wisconsin.gov**
anne.sappenfield@legis.wisconsin.gov

Pre Topic:

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May Contact:

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Subject: **Children - abuse and neglect
Children - out-of-home placement**

Extra Copies:

Submit via email: **YES**

Requester's email: **anne.sappenfield@legis.wisconsin.gov**

Carbon copy (CC:) to:

*called 9-10-09 does not need jacketing buttons -
Switch to Sen. Jauch w/ cc to Cindy McInnis
from Rep. Grigsby*

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← to correct email address

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| /? | gmalaise | /P1 bjk 5/11 |  |  | | | |

FE Sent For:

<END>

Handwritten notes: 5/11, JK

Malaise, Gordon

From: Sappenfield, Anne
Sent: Monday, April 20, 2009 11:18 AM
To: Malaise, Gordon
Subject: Disclosure proposal

Attachments: 24jauch_grigsby_as

Hi Gordon,

Here is the memo I wrote for Jauch and Grigsby. Like I said, I think it's too vague in some places. Some of it will look very familiar, however.

Please draft it as a preliminary draft. Also, could you let me know when you think it may be ready?

Thanks!!

Anne



24jauch_grigsby_as
.doc (102 KB...



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR ROBERT JAUCH AND REPRESENTATIVE TAMARA GRIGSBY

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Proposal Relating to Disclosure of Information Relating to Child Fatalities or Near Fatalities Due to Abuse or Neglect and Child Maltreatment

DATE: March 24, 2009

This memorandum, prepared at your request, sets forth a proposal to require expanded disclosure of information relating to child fatalities and near fatalities due to abuse or neglect, suicide of children in out-of-home placements, egregious child maltreatment, and sexual assault of children in out-of-home placements.

WISCONSIN LAW

Under current Wisconsin law, all reports of suspected child abuse or neglect that are made and records maintained relating to reports of suspected child abuse or neglect are confidential. [s. 48.981 (7) (a) (intro.), Stats.] There are several exceptions. One exception provides that an agency¹ may disclose to the general public a written summary of specified information relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported if any of the following circumstances apply:

- A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney (DA) indicates that a person who is deceased would have been charged with such a crime.
- A judge, DA, law enforcement officer, law enforcement agency, or any other officer or agency whose official duties include the investigation or prosecution of a crime has previously disclosed to the public, in the performance of the official duties, that the suspected

¹ "Agency" means a county department of human or social services or, in Milwaukee County, the Department of Health and Family Services (DHFS) or a licensed child welfare agency under contract with a county department of DHFS to perform child abuse and neglect investigations.

abuse or neglect of the child has been investigated or that child welfare services have been provided to the child or to the child's family under ch. 48, Stats. (the Children's Code).

- A parent, guardian, or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of information relating to the death or serious or critical condition of the child.

If an agency is permitted to disclose information relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect, the agency may disclose all of the following information from its records:

- A description of any investigation made by the agency in response to the report of suspected abuse or neglect; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child.
- Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report; a statement of the determination made by the agency as to whether abuse or neglect had occurred or was likely to occur; with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child.
- Whether the child or the child's family has received any services under the Children's Code prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

An agency, however, may not disclose any of the information described above, if any of the following applies:

- The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings, or any other child residing in the same dwelling as the child; or that disclosure of the information is likely to cause mental, emotional, or physical harm or danger to the child who is the subject of the report, the child's siblings, or any other child residing in the same dwelling as the child.
- The DA determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or proceeding or would jeopardize a defendant's right to a fair trial.

- The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.
- Disclosure of the information is not authorized by state law or rule or by federal law or regulation.
- The investigation of the report of suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.
- Disclosure of the information would reveal the identity of the child who is the subject of the report; the child's siblings; the child's parent, guardian, or legal custodian or any other person residing in the same dwelling as the child; and the information that would reveal the identity of those persons has not previously been disclosed to the public.
- Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

Any person who requests information relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect and whose request is denied may petition the juvenile court to order the disclosure of that information. [s. 48.981 (7) (cr), Stats.]

Also, under current law, child abuse and neglect reports and records may be disclosed to a citizen review panel established or designated by the Department of Children and Families (DCF) or a county department or a child fatality review team recognized by a county department or, in Milwaukee County, DCF.

PROPOSAL TO DISCLOSE INFORMATION

This section of the memorandum outlines a proposal to create exceptions to the confidentiality of child abuse and neglect records so that certain information relating to deaths or near deaths of children due to abuse or neglect, suicides of children in out-of-home care, egregious child maltreatment, and sexual assault of children in out-of-home care may be disclosed to the public or to citizen review panels and child fatality review teams.²

New Exceptions to the Confidentiality of Abuse and Neglect Records

- Repeal current law relating to disclosure to the public of information relating to a child who has died or been placed in serious or critical condition as a result of abuse or neglect.
- **Require** an agency to report to the Division of Safety and Permanence, DCF, when the agency suspects that a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect or that a child placed outside of his or her home under a court order has committed suicide within two working days of the finding that the

² It is my understanding that the Milwaukee Partnership Council has been designated as a child fatality review team.

death or injury is a result of suspected abuse or neglect or that a death of a child placed outside of his or her home is a suspected suicide. The report must include the following:

- ✓ The name of the agency and the name of a contact person at the agency.
- ✓ Information about the child, including the age, gender, and race or ethnicity of the child and the date of the incident.
- ✓ The suspected cause of death or serious or critical condition of the child.
- ✓ A brief history of the services under the Children's Code offered or provided to the child, the child's family, and the person suspected of the abuse or neglect.
- ✓ A statement of whether the child was placed in his or her home or outside of the home when the incident occurred.
- ✓ The identity of any law enforcement agency that referred the report of the incident and of any law enforcement agency, DA, or other officer or agency to which the report of the incident was referred.
- ✓ Any immediate actions taken by the agency in response to the incident.

① **Require** DCF to disclose to the public within two working days of receiving a report of a death or that a child has been placed in serious or critical condition or a suicide the following information:

- That DCF has received a report.
- Whether DCF is conducting an investigation.
- The scope of the investigation.
- Other entities with whom DCF is cooperating in the investigation.
- Whether the child was in an out-of-home placement at the time of the incident.
- The child's age, gender, and race or ethnicity.

② **Require** the Division of Safety and Permanence, DCF, to prepare a summary report of any death or serious or critical condition or suicide of a child reported to the division by an agency within 90 days of receiving the initial information from the agency and make that report available to the public.

✓ If the child was placed in his or her home when the incident occurred, require DCF's summary report to contain all of the following:


- ✓ Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant, a description of any special needs of the child.


- Ø A statement of whether any services under the Children's Code were being provided to the child, the child's family, or the person suspected of the abuse or neglect, or whether the child, any member of the child's family, or the person suspected of the abuse or neglect was the subject of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact.
- Ø A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in receiving services under the Children's Code in the five years preceding the date of the incident.
- Ø A summary of any actions taken by the agency with respect to the child, the child's family, and the person suspected of the abuse or neglect, including any referrals by the agency of the child, any member of the child's family, or the person suspected of the abuse or neglect for services.
- ✓ The date and suspected cause of the death or serious or critical condition of the child.
- ✓ The findings on which the agency bases its reasonable suspicion that the death or serious or critical condition of the child resulted from abuse or neglect, including any material circumstances leading to the death or serious or critical condition of the child.
- ✓ A summary of any services that have been provided to the child's family since the date of the incident.


✓ If the child was placed in an out-of-home placement at the time of the incident, require the summary report to contain all of the following:

- Ø Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the incident, a description of any special needs of the child.
- ✓ A description of the out-of-home placement, including the basis for the decision to place the child in that placement.
- Ø A description of all other persons residing in the out-of-home placement.
- Ø The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all statute or administrative rule violations by the licensee and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.
- Ø The date and suspected cause of the death or serious or critical condition of the child.
- Ø The findings on which the agency bases its reasonable suspicion that the death or serious or critical condition of the child resulted from abuse or neglect, including any

material circumstances leading to the death or serious or critical condition of the child.

 **Require** DCF to provide in the summary report or in a separate report, within six months of the initial report of the death or incident that placed the child in serious or critical condition, recommendations for changes in practice, policy, or state law to address issues raised in the investigation of the death or serious or critical condition of the child and a summary of any changes that have been made in practice or policy to address those issues. If the information is contained in a separate report, this report must also be available to the public.

 **Require** DCF to disclose information relating to an egregious incident of child maltreatment to the Milwaukee Partnership Council, a child abuse citizen review panel or a child fatality review team and to any other person, upon request.³ “Egregious incident of child maltreatment” could be defined as abuse or neglect, that is flagrant, including alleged cases of maltreatment involving significant violence, torture, multiple child victims, the use of inappropriate or cruel restraint, and the exposure of a child to dangerous situations.⁴

 **Require** DCF to disclose information to the public relating to incidents of sexual assault of a child placed outside of his or her home by a substitute care provider (e.g., a foster parent), a member of the substitute care provider’s household, or a relative of the substitute care provider in a quarterly written report.

Information That May Not be Disclosed

- Provide that any information disclosed under the proposal may not contain the following:
 - ✓ ○ Any information that would reveal the identity of the child who died, was placed in serious or critical condition, ~~or suffered egregious maltreatment~~; any member of the child’s family; or any caregiver of the child.
 - ✓ ○ Any information that would reveal the identity of any employee of the agency that provided services to the child or the child’s family or participated in any investigation of the death, serious or critical condition, or egregious maltreatment of the child.
 - ✓ ○ Any information that would reveal the identity of a reporter or of any other person who provides information relating to the death, serious or critical condition, or egregious maltreatment of the child.

³ Under current law, any person to whom a child abuse or neglect record is disclosed may not further disclose it except as permitted under current law. [s. 48.981 (7) (e), Stats.]

⁴ This definition is based upon the definition set forth in DCF’s Memo Series 2005-16, a memo to county departments and tribal chairpersons and human services facilitators relating to notification of cases of abuse or neglect involving death, serious injury, or egregious incidents.

- ∅ Any information which may not be disclosed under state law or rule or federal law or regulation.

Circumstances Under Which Information May Not be Disclosed

- Provide that DCF may not make information relating to a death, serious or critical condition, or egregious maltreatment of a child available if any of the following conditions apply:
 - ∅ Disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial.
 - ∅ Disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

✓ **Immunity**

- Provide that any person acting in good faith in providing the information under the proposal is immune from any civil or criminal liability that may result by reason of those actions.

2

Refusal to Disclose

- As under current law, provide that a person who requests information as provided under the proposal and whose request is denied may petition the juvenile court to order disclosure of that information.

48.981(2)(7)

(Cr) 4. If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ksm

But if proposal says DCF shall disclose,
there is no discretion to deny request

But - interpretation, e.g.

jeopardize prosecution, etc

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STATE OF WISCONSIN
 Department of Health and Family Services
 Division of Children and Family Services

DCFS Memo Series 2005 - 16
 December 21, 2005

Re: NOTIFICATION OF CASES OF
 ABUSE OR NEGLECT
 INVOLVING DEATH, SERIOUS
 INJURY, OR EGREGIOUS
 INCIDENTS

(Supersedes DCFS Memo Series 2004-04)

To: Area Administrators/Human Service Area Coordinators
 Bureau Directors
 County Departments of Community Programs Directors
 County Departments of Developmental Disabilities Services Directors
 County Departments of Human Services Directors
 County Departments of Social Services Directors
 Licensing Chiefs/Section Chiefs
 Tribal Chairpersons/Human Services Facilitators

From: Burnie Bridge
 Administrator

The Department, via the Division of Children and Family Services (DCFS), is charged with supervising county agencies in areas related to child welfare. When deaths or serious injuries resulting from abuse or neglect or egregious incidents of child maltreatment occur, DCFS must be notified of the situation. As such, county agencies and the Bureau of Milwaukee Child Welfare must notify the Bureau of Programs and Policies in DCFS when a child dies, suffers from a serious injury, or is involved in an egregious incident related to maltreatment.

For purposes of this numbered memo, the following definitions apply:

- "Serious injury" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ.
- "Egregious incident" means cases of abuse or neglect that are flagrant. This may include alleged cases of maltreatment involving significant violence, torture, multiple child victims, the use of inappropriate or cruel restraint (e.g., keeping children locked in cages), the exposure of children to dangerous situations [e.g., making children stay outside in the winter as punishment (to an extreme degree, without coats, locking doors, etc.)], and similar types of circumstances. We ask you to err on the side of notification of the Division if there is any doubt.

The purpose of this notification is to immediately alert DCFS, as the supervising entity for child welfare services, to situations to which our staff may have to respond from a practice perspective and to which Department management may have to respond to inquiries from legislators, the public, and representatives of the media.

The attached form, as revised, is to be used for this notification (see Appendix A). The form must be submitted within 24 hours after the death, serious injury, or egregious incident or within 24 hours after the county department becomes aware of the situation. Following receipt of the form, the Division will review information available on eWisACWIS and may contact the person who submitted the form to obtain additional information.

Completed forms should be faxed to the Director of the Bureau of Programs and Policies at (608) 264-6750. The form can be found on the Department's web site at the following location: <http://dhfs.wisconsin.gov/forms/dcfs/CFS2091.pdf>

Attached is the protocol which the Division of Children and Family Services will use to assess the need for a review and the objectives and process of the review.

Your cooperation is greatly appreciated in assisting the Department in achieving the above purposes.

REGIONAL OFFICE CONTACT: Area Administrator

CENTRAL OFFICE CONTACT: Connie Klick, Section Manager
Child Welfare & Family Violence Programs
DHFS/DCFS/BPP
P.O. Box 8916
Madison, WI 53708-8916
Phone: (608) 266-1489
FAX: (608) 264-6750
E-Mail: klickcl@dhfs.state.wi.us

Attachments:

Protocol Related to Reviews of Child Death, Serious Injuries, and Egregious Incidents (PDF, 36 kb)

The Roles of the Counties and State in WI's Protective Services System

PDF 9, kb)

Child's Death, Serious Injury or Egregious Incident Notification form (PDF, 56 kb) (WORD, 83 kb)

c: County CPS Supervisors
County Foster Care Coordinators
Tribal Child Welfare Contact Persons

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-27447

GMMO.....

lbjk

Soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 517

SA
X-ref

- 1 AN ACT ^{gen}...; relating to: public disclosure of certain information when abuse or
2 neglect results in a child dying or being placed in serious or critical condition
3 or involves aggravated circumstances or when a child in an out-of-home
4 placement commits suicide or is sexually abused by a caregiver.

Analysis by the Legislative Reference Bureau

Introduction

Under current federal law, to be eligible for a grant under the Child Abuse Prevention and Treatment Act (commonly referred to as "CAPTA"), a state must have in effect a state plan that includes, among other things, provisions that allow for public disclosure of findings and information about a case of child abuse or neglect that has resulted in a child fatality or near fatality. This bill eliminates the current state law that under certain circumstances *permits* disclosure to the general public of certain information relating to a child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect (child fatality or near fatality) and instead *requires* certain information to be made available to the public:

1. When an incident occurs in which a child has died or been placed in serious or critical condition as a result of suspected abuse or neglect or in which a child who has been placed outside the home under an order of the court assigned to exercise jurisdiction under the Children's Code or the Juvenile Justice Code has committed suicide (incident of death or serious injury).

2. When an incident of suspected abuse or neglect occurs, other than an incident of death or serious injury, that involves significant violence, multiple

victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other aggravated circumstances (incident of egregious abuse or neglect).

3. When a child who is placed outside the home is sexually abused by his or her foster or treatment foster parent or the relative in whose home the child is placed, by any other person who resides in the foster or treatment foster home or in the home of the relative, by any relative of the foster or treatment foster parent or relative, or by any employee, contractor, or volunteer of the group home, shelter care facility, or residential care center for children and youth in which the child is placed (sexual abuse by a caregiver).

> ~~By em dash~~
Current law disclosure permitted

When disclosure is permitted. Under current law, a county department of human services or social services or, in Milwaukee County, the Department of Children and Families (DCF) or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (agency) is permitted to disclose to the general public a written summary of certain information relating to a child fatality or near fatality if any of the following circumstances apply:

1. A person has been charged with a crime for causing the child fatality or near fatality.

2. A judge, district attorney, law enforcement officer or agency, or any other officer or agency whose duties include the investigation or prosecution of crime has previously disclosed to the public that the suspected abuse or neglect that caused the child fatality or near fatality has been investigated or that child welfare services have been provided to the child or the child's family.

3. A parent, guardian, or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information.

What disclosure is permitted. The information that may be disclosed in cases of a child fatality or near fatality is as follows:

1. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect; a statement of the determination made by the agency as to whether abuse or neglect occurred and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as that child.

2. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report; a statement of the determination made by the agency as to whether abuse or neglect occurred and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as that child.

3. Whether the child or the child's family has received any child welfare services prior to the report of the suspected abuse or neglect that caused the child fatality or near fatality or prior to any previous report of suspected or threatened abuse or neglect.

When disclosure is not permitted. An agency may not disclose such information if any of the following circumstances apply:

1. The agency determines that disclosure of the information would be contrary to the best interests of the child, the child's siblings, or any other child residing in the same dwelling as the child or that disclosure of the information is likely to cause mental, emotional, or physical harm or danger to and of those person or any other person.

2. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

3. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of the proceeding.

4. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

5. The investigation of the abuse or neglect report has not been completed.

6. Disclosure of the information would reveal the identity of the child, the child's siblings, the child's parents, guardian, or legal custodian, or any other person residing in the same dwelling as the child.

7. Disclosure of the information would reveal the identity of the person who reported the suspected abuse or neglect that caused the child fatality or near fatality or any other person who provides information relating to that suspected abuse or neglect. ~~by dash~~ ^(B)

> ***The bill disclosure required***

Incidents of death or serious injury. This bill eliminates current law relating to disclosure to the general public of information about a child fatality or near fatality. Instead, the bill requires an agency that has reason to suspect that an incident of death or serious injury has occurred to provide to the subunit of DCF responsible for statewide oversight of child abuse and neglect programs, within two working days after determining that such an incident is suspected to have occurred, the age, gender, and race or ethnicity of the child; the date of the incident; the suspected cause of the death or serious or critical condition of the child; a brief history of the child welfare services offered or provided to the child, members of the child's family, and the person suspected of the abuse or neglect; a statement of whether the child was placed in his or her home or outside the home when the incident occurred; and the identity of any law enforcement agency that referred the report of the incident to the agency and of any law enforcement agency, district attorney, or other officer or agency to which the agency referred the report of the incident.

The subunit of DCF then is required to disclose to the public, within two working days after receiving that information, the fact that the subunit has received the information; whether DCF is conducting an investigation of the incident and, if

so, the scope of the investigation and the identities of any other agencies with which DCF is cooperating in conducting the investigation; whether the child was placed in the home or in an out-of-home placement at the time of the incident; and information about the child, including the age, gender, and race or ethnicity of the child.

Within 90 days after receiving the information, the subunit of DCF must prepare and make available to the public a summary report about the incident. That subunit may also include in the summary report a summary of any changes in policies or practices that have been made to address any issues raised in the investigation and recommendations for any further changes in policies, practices, rules, or statutes that may be needed to address those issues. If the subunit does not include those changes and recommended changes in the summary report, the subunit must prepare and make available to the public a report of those changes and recommended changes within six months after receiving the information.

If the child was placed in his or her home when the incident of death or serious injury occurred, the summary report must contain all of the following:

1. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the incident, a description of any special needs of the child.

2. A statement of whether any child welfare services were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact between the agency providing those services and the person receiving those services.

3. A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in receiving child welfare services in the five years preceding the date of the incident.

4. A summary of any actions taken by the agency with respect to the child, any member of the child's family, and the person suspected of the abuse or neglect, including any referrals by the agency of any of those persons for services.

5. The date of the incident and the suspected cause of the death or serious or critical condition of the child, as reported by the agency.

6. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury has occurred, including any material circumstances leading to the death or serious or critical condition of the child.

7. A summary of any services that have been provided to the child's family since the date of the incident.

If the child was placed in an out-of-home placement at the time of the incident of death or serious injury, the summary report must contain all of the following:

1. Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the incident, a description of any special needs of the child.

2. A description of the out-of-home placement, including the basis for the decision to place the child in that placement.

3. A description of all other persons residing in the out-of-home placement.

4. The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure or rules promulgated by DCF and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.

5. The date of the incident and the suspected cause of the death or serious or critical condition of the child, as reported by the agency.

6. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury has occurred, including any material circumstances leading to the death or serious or critical condition of the child.

Incidents of egregious abuse or neglect. Under current law, each agency that receives or investigates a report of suspected child abuse or neglect must provide DCF with information about each report that it receives or investigation that it conducts.

This bill requires the subunit of DCF that receives information from an agency about an incident of egregious abuse or neglect, within two working days after receiving the information, to disclose to a child fatality review team, a citizen review panel, and, in Milwaukee County, the Milwaukee child welfare partnership council the same information that must be disclosed to the public by that subunit within two working days after receiving information about an incident of death or serious injury. That subunit must also disclose that information to any other person on request.

Incidents of sexual abuse by a caregiver. Current law requires DCF to submit an annual report to the governor and the legislature on the status of the child abuse and neglect programs administered by DCF. The report must include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of the child abuse and neglect services offered by DCF and their effectiveness, and recommendations for additional legislation and other actions to fulfill the purposes of the child abuse and neglect reporting law.

This bill requires DCF, within 30 days after the end of each calendar quarter, to prepare and make available to the public a summary report of all reports received by DCF during that calendar quarter of incidents of sexual abuse by a caregiver. DCF must make available for each report included in the summary report the same information that must be included in a summary report of an incident of death or serious injury of a child placed in out-of-home care.

What disclosure is prohibited. A summary report of an incident of death or serious injury, a disclosure of information concerning an incident of egregious abuse or neglect, and a quarterly report of incidents of sexual abuse by a caregiver may not include any of the following:

1. Any information that would reveal the identity of the child who is the subject of the summary report, disclosure, or incident reported in the quarterly report, any member of the child's family, or any caregiver of the child.

2. Any information that would reveal the identity of any member of the child's family, the person suspected of the abuse or neglect, or any employee of any agency

that provided child welfare services to the child or that participated in the investigation of the incident.

3. Any information that would reveal the identity of the reporter of the incident or of any other person who provides information relating to the incident.

4. Any information the disclosure of which is not authorized by state law or rule or federal law or regulation.

When disclosure is prohibited. Finally, under the bill, the subunit of DCF that prepares a summary report of an incident of death or serious injury, a disclosure of information concerning an incident of egregious abuse or neglect, or a quarterly report of incidents of sexual abuse by a caregiver may not make the summary report or disclosure available to the public or include any information about an incident of sexual abuse by a caregiver in the quarterly report if the subunit determines that making the summary report or disclosure available or including the information in the quarterly report would jeopardize: 1) any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial; or 2) any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

extra space → For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.981 (7) (cr) of the statutes is repealed and recreated to read:

2 48.981 (7) (cr) 1. In this paragraph:

3 a. "Incident of death or serious injury" means an incident in which a child has
4 died or been placed in serious or critical condition, as determined by a physician, as
5 a result of any suspected abuse or neglect that has been reported under this section
6 or in which a child who has been placed outside the home by a court order under this
7 chapter or ch. 938 is suspected to have committed suicide.

8 b. "Incident of egregious abuse or neglect" means an incident of suspected
9 abuse or neglect that has been reported under this section, other than an incident
10 of death or serious injury, involving significant violence, torture, multiple victims,
11 the use of inappropriate or cruel restraints, exposure of a child to a dangerous
12 situation, or other similar, aggravated circumstances.

1 2. Notwithstanding par. (a), if an agency that receives a report under sub. (3)
2 has reason to suspect that an incident of death or serious injury has occurred, within
3 2 working days after determining that such an incident is suspected to have occurred
4 the agency shall provide all of the following information to the subunit of the
5 department responsible for statewide oversight of child abuse and neglect programs:

6 a. The name of the agency and the name of a contact person at the agency.

7 b. Information about the child, including the age, gender, and race or ethnicity
8 of the child.

9 c. The date of the incident and the suspected cause of the death or serious or
10 critical condition of the child.

11 d. A brief history of the services under this chapter offered or provided to the
12 child, members of the child's family, and the person suspected of the abuse or neglect.

13 e. A statement of whether the child was placed in his or her home or outside
14 the home when the incident occurred.

15 f. The identity of any law enforcement agency that referred the report of the
16 incident and of any law enforcement agency, district attorney, or other officer or
17 agency to which the report of the incident was referred.

18 3. a. Within 2 working days after receiving the information provided under
19 subd. 2., the subunit of the department that received the information shall disclose
20 to the public the fact that the subunit has received the information; whether the
21 department is conducting an investigation of the incident and, if so, the scope of the
22 investigation and the identities of any other agencies with which the department is
23 cooperating in conducting the investigation; whether the child was placed in the
24 home or in an out-of-home placement at the time of the incident; and information
25 about the child, including the age, gender, and race or ethnicity of the child.

1 b. Within 90 days after receiving the information provided under subd. 2., the
2 subunit of the department that received the information shall prepare and make
3 available to the public a summary report that contains the information specified in
4 subd. 4^{or} 5., whichever is applicable. That subunit may also include in the
5 summary report a summary of any changes in policies or practices that have been
6 made to address any issues raised in the investigation and recommendations for any
7 further changes in policies, practices, rules, or statutes that may be needed to
8 address those issues. If the subunit does not include those changes and
9 recommended changes in the summary report, the subunit shall prepare and make
10 available to the public a report of those changes and recommended changes within
11 6 months after receiving the information provided under subd. 2.

12 4. If the child was placed in his or her home when the incident of death or
13 serious injury occurred, the summary report under subd. 3. shall contain all of the
14 following:

15 a. Information about the child, including the age, gender, and race or ethnicity
16 of the child, a description of the child's family, and, if relevant to the incident, a
17 description of any special needs of the child.

18 b. A statement of whether any services under this chapter were being provided
19 to the child, any member of the child's family, or the person suspected of the abuse
20 or neglect, or whether any of those persons was the subject of a referral to the agency
21 for services, at the time of the incident and, if so, the date of the last contact between
22 the agency providing those services and the person receiving those services.

23 c. A summary of all involvement of the child's parents and of the person
24 suspected of the abuse or neglect in receiving services under this chapter in the 5
25 years preceding the date of the incident.

1 d. A summary of any actions taken by the agency with respect to the child, any
2 member of the child's family, and the person suspected of the abuse or neglect,
3 including any referrals by the agency of any of those persons for services.

4 e. The date of the incident and the suspected cause of the death or serious or
5 critical condition of the child, as reported by the agency under subd. 2. c.

6 f. The findings on which the agency bases its reasonable suspicion that an
7 incident of death or serious injury has occurred, including any material
8 circumstances leading to the death or serious or critical condition of the child.

9 g. A summary of any services that have been provided to the child's family since
10 the date of the incident.

11 5. If the child was placed in an out-of-home placement at the time of the
12 incident of death or serious injury, the summary report under subd. 3. shall contain
13 all of the following:

14 a. Information about the child, including the age, gender, and race or ethnicity
15 of the child and, if relevant to the incident, a description of any special needs of the
16 child.

17 b. A description of the out-of-home placement, including the basis for the
18 decision to place the child in that placement.

19 c. A description of all other persons residing in the out-of-home placement.

20 d. The licensing history of the out-of-home placement, including the type of
21 license held by the operator of the placement, the period for which the placement has
22 been licensed, and a summary of all violations by the licensee of any provisions of
23 licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67
24 and of any other actions by the licensee or an employee of the licensee that constitute
25 a substantial failure to protect and promote the health, safety, and welfare of a child.

1 e. The date of the incident and the suspected cause of the death or serious or
2 critical condition of the child, as reported by the agency under subd. 2. c.

3 f. The findings on which the agency bases its reasonable suspicion that an
4 incident of death or serious injury has occurred, including any material
5 circumstances leading to the death or serious or critical condition of the child.

6 6. Within 2 working days after receiving information under sub. (3) (c) 8. about
7 an incident of egregious abuse or neglect, the subunit of the department that receives
8 the information shall disclose to a child fatality review team, as described in par. (a)
9 15., a citizen review panel, as described in par. (a) 16., and, in a county having a
10 population of 500,000 or more, the Milwaukee child welfare partnership council the
11 fact that the subunit has received the information; whether the department is
12 conducting an investigation of the incident and, if so, the scope of the investigation
13 and the identities of any other agencies with which the department is cooperating
14 in conducting the investigation; whether the child was placed in the home or in an
15 out-of-home placement at the time of the incident; and information about the child,
16 including the age, gender, and race or ethnicity of the child. That subunit shall also
17 disclose that information to any other person on request.

18 7. A summary report under subd. 3. or a disclosure under subd. 6. may not
19 include any of the following:

20 a. Any information that would reveal the identity of the child who is the subject
21 of the summary report or disclosure, any member of the child's family, or any
22 caregiver of the child.

23 b. Any information that would reveal the identity of any member of the child's
24 family, the person suspected of the abuse or neglect, or any employee of any agency
25 that provided services under this chapter to the child or that participated in the

1 investigation of the incident of death or serious injury or the incident of egregious
2 abuse or neglect.

3 c. Any information that would reveal the identity of a reporter or of any other
4 person who provides information relating to the incident of death or serious injury
5 or the incident of egregious abuse or neglect.

6 d. Any information the disclosure of which is not authorized by state law or rule
7 or federal law or regulation.

8 8. The subunit of the department that prepares a summary report under subd.
9 3. or that makes a disclosure under subd. 6. may not make the summary report or
10 disclosure available to the public if the subunit determines that making the
11 summary report or disclosure available to the public would jeopardize any of the
12 following:

13 a. Any ongoing or future criminal investigation or prosecution or a defendant's
14 right to a fair trial.

15 b. Any ongoing or future civil investigation or proceeding or the fairness of such
16 a proceeding.

17 9. If the department fails to disclose to the public any information that the
18 department is required to disclose under this paragraph, any person may request the
19 department to disclose that information. If the person's request is denied, the person
20 may petition the court to order the disclosure of that information. On receiving a
21 petition under this subdivision, the court shall notify the department, the agency, the
22 district attorney, the child, and the child's parent, guardian, or legal custodian of the
23 petition. If any person notified objects to the disclosure, the court may hold a hearing
24 to take evidence and hear argument relating to the disclosure of the information.
25 The court shall make an in camera inspection of the information sought to be

disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 7. or 8. apply.

10. Any person acting in good faith in providing information under subd. 2. or in preparing, transmitting, or making available a summary report under subd. 3. or a disclosure under subd. 6. is immune from any liability, civil or criminal, that may result by reason of those actions. For purposes of any proceeding, civil or criminal, the good faith of a person in providing information under subd. 2. or in preparing, transmitting, or making available a summary report under subd. 3. or a disclosure under subd. 6. shall be presumed.

SECTION 2. 48.981 (9) of the statutes is renumbered 48.981 (9) (a).

SECTION 3. 48.981 (9) (title) of the statutes is amended to read:

48.981 (9) (title) ANNUAL AND QUARTERLY REPORTS.

SECTION 4. 48.981 (9) (a) (title) of the statutes is created to read:

48.981 (9) (a) (title) *Annual reports.*

SECTION 5. 48.981 (9) (b) of the statutes is created to read:

48.981 (9) (b) *Quarterly reports.* Within 30 days after the end of each calendar quarter, the department shall prepare and make available to the public a summary report of all reports received by the department under sub. (3) (c) 8. during that calendar quarter of abuse, as defined in s. 48.01 (1) (b) to (f), of a child who is placed in the home of a foster parent, treatment foster parent, or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth by that foster parent, treatment foster parent, or relative, by any other person who resides in the home of the foster parent, treatment foster parent, or relative, by any relative of the foster parent, treatment foster parent, or relative, or by any employee, contractor, or volunteer of the group home, shelter care facility, or

1 residential care center for children and youth. The department shall make available
2 for each report included in the summary report the information specified in sub. (7)
3 (cr) 5. a. to d., the date of the incident of abuse, and the findings on which the agency
4 bases its reasonable suspicion that abuse has occurred, but may not make available
5 any of the information specified in sub. (7) (cr) 7. or any information that would
6 jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 8. a.
7 or b.

8 SECTION 6. Initial applicability.

9 (1) INCIDENT REPORTING. This act first applies to an incident of death or serious
10 injury, as defined in section 48.981 (7) (cr) 1. a. of the statutes, ~~as affected by this act~~²
11 or an incident of egregious abuse or neglect, as defined in section 48.981 (7) (cr) 1.
12 b. of the statutes, ~~as affected by this act~~², that occurs on the effective date of this
13 subsection.

14 SECTION 7. Effective date.

15 (1) INCIDENT REPORTING. This act takes effect on the first day of the 3rd month
16 beginning after publication.

17 (END)

Malaise, Gordon

From: Kahn, Carrie
Sent: Wednesday, August 26, 2009 1:37 PM
To: Malaise, Gordon
Subject: FW: disclosure bill

Hi Gordon,

Please find below some drafting instructions for changes to LRB 2744/P1. Anne is out of the office until next week, but I was hoping you'd be able to work on these changes. You'll see that the sexual assault part of the bill she refers to deals with the annual and quarterly reports section of the bill draft on page 12-13. We'd just like some additional information be required to be available in those reports, as stated below.

✓ In addition to this, Bob would like a provision added to the annual and quarterly reports requiring the reports to be submitted to the Legislature and oblige legislative committees to hold an annual public hearing on the reports. I don't know how you word this, as the reports should be submitted to the committees tasked with child welfare issues.

✓ Next, we'd like to add a best interest of the child provision under the section that starts on page 10—
"7. A summary report under subd. 3. or a disclosure under subd. 6. may not include the following:"

✓ You'll see Anne's language below. In addition to this, we'd like Children's Courts to make the determination if the Dept. properly denied a person's request for disclosure, also on page 11.

done - subd. 9, p 11

Thanks, let me know if you have questions.

Carrie Kahn
Legislative Assistant
State Senator Bob Jauch
P.O. Box 7882
Madison, WI 53707-7882

608-266-3510
1-800-469-6562

From: Sappenfield, Anne
Sent: Friday, August 14, 2009 1:16 PM
To: McGinnis, Cindy; Kahn, Carrie
Subject: disclosure bill

Hello!

For the sexual assault part of the disclosure bill—

① The department shall make available in the summary report the number of allegations of abuse, *the number of allegations of injury, disease or pregnancy as a result of abuse, the county in which the allegations of abuse occurred, the ages or age groups of children who are the subject of the alleged incidents of abuse, whether the allegations were substantiated, the dates of the alleged incidents of abuse, and the type of provider alleged as the maltreater...*

This may be too broad but hopefully it is a good starting place.

✓ For the best interests provision—

② First, I think you should add that DCF cannot disclose any information that would identify a member of the child's

household who is a child.

③ Second, what about may not disclose:

after consultation w/ the agency, the D.A., & the ct,

✓ Any information that the department determines is not in the best interest of the child's sibling, a members of the child's household who is a child, or, in the case of a serious injury or egregious incident, the child who is the subject of the disclosure to disclose after considering the interests of the siblings, child members of the household and, if applicable, the child and the benefit to the public in disclosing the information.

I know it's kind of wordy, but I think it may be more positive in that it requires DCF to consider best interests and interests in public disclosure.

I'm outta here, but I will check my email off and on next week.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
(608) 267-9485

Malaise, Gordon

From: Kahn, Carrie
Sent: Wednesday, August 26, 2009 1:38 PM
To: Malaise, Gordon
Subject: FW:

Gordon,

Please also see the email below from Anne for additional changes.

Carrie Kahn
Legislative Assistant
State Senator Bob Jauch
P.O. Box 7882
Madison, WI 53707-7882

608-266-3510
1-800-469-6562

From: Sappenfield, Anne
Sent: Friday, August 14, 2009 1:30 PM
To: Kahn, Carrie; McGinnis, Cindy
Subject:

I just realized that Sen. Jauch asked for DCF to consult with the DA, the agency, and the judge in making a best interest determination. Feel free to add that to what I sent over. It seems a little unwieldy, but doable. Thanks!

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
(608) 267-9485



State of Wisconsin
2009 - 2010 LEGISLATURE

IN 8/31

LRB-2744/

GMM:bjk:rs

P2

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA

Inserts
out of order

death or serious injury

1 AN ACT *to renumber* 48.981 (9); *to amend* 48.981 (9) (title); *to repeal and*
2 *recreate* 48.981 (7) (cr); and *to create* 48.981 (9) (a) (title) and 48.981 (9) (b)
3 of the statutes; **relating to:** public disclosure of certain information when
4 ^{child} abuse or neglect results in ~~a child dying or being placed in serious or critical~~
5 ~~condition~~ or involves aggravated circumstances or when a child in an
6 out-of-home placement commits suicide or is sexually abused by a caregiver.

Analysis by the Legislative Reference Bureau

Introduction

Under current federal law, to be eligible for a grant under the Child Abuse Prevention and Treatment Act (commonly referred to as "CAPTA"), a state must have in effect a state plan that includes, among other things, provisions that allow for public disclosure of findings and information about a case of child abuse or neglect that has resulted in a child fatality or near fatality. This bill eliminates the current state law that under certain circumstances *permits* disclosure to the general public of certain information relating to a child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect (child fatality or near fatality) and instead *requires* certain information to be made available to the public:

1. When an incident occurs in which a child has died or been placed in serious or critical condition as a result of suspected abuse or neglect or in which a child who has been placed outside the home under an order of the court assigned to exercise

(Juvenile Court)

jurisdiction under the Children's Code or the Juvenile Justice Code has committed suicide (incident of death or serious injury).

2. When an incident of suspected abuse or neglect occurs, other than an incident of death or serious injury, that involves significant violence, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other aggravated circumstances (incident of egregious abuse or neglect).

3. When a child who is placed outside the home is sexually abused by his or her foster or treatment foster parent or the relative in whose home the child is placed, by any other person who resides in the foster or treatment foster home or in the home of the relative, by any relative of the foster or treatment foster parent or relative, or by any employee, contractor, or volunteer of the group home, shelter care facility, or residential care center for children and youth in which the child is placed (sexual abuse by a caregiver).

Current law — disclosure permitted

When disclosure is permitted. Under current law, a county department of human services or social services or, in Milwaukee County, the Department of Children and Families (DCF) or a child welfare agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (agency) is permitted to disclose to the general public a written summary of certain information relating to a child fatality or near fatality if any of the following circumstances apply:

1. A person has been charged with a crime for causing the child fatality or near fatality.

2. A judge, district attorney, law enforcement officer or agency, or any other officer or agency whose duties include the investigation or prosecution of crime has previously disclosed to the public that the suspected abuse or neglect that caused the child fatality or near fatality has been investigated or that child welfare services have been provided to the child or the child's family.

3. A parent, guardian, or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information.

What disclosure is permitted. The information that may be disclosed in cases of a child fatality or near fatality is as follows:

1. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect; a statement of the determination made by the agency as to whether abuse or neglect occurred and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as that child.

2. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report; a statement of the determination made by the agency as to whether abuse or neglect occurred and the basis for that determination; a statement of whether any services were offered or provided to the child, the child's family, or the person suspected of the abuse or

neglect; and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as that child.

3. Whether the child or the child's family has received any child welfare services prior to the report of the suspected abuse or neglect that caused the child fatality or near fatality or prior to any previous report of suspected or threatened abuse or neglect.

When disclosure is not permitted. An agency may not disclose such information if any of the following circumstances apply:

1. The agency determines that disclosure of the information would be contrary to the best interests of the child, the child's siblings, or any other child residing in the same dwelling as the child or that disclosure of the information is likely to cause mental, emotional, or physical harm or danger to and of those person or any other person.

2. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

3. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of the proceeding.

4. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

5. The investigation of the abuse or neglect report has not been completed.

6. Disclosure of the information would reveal the identity of the child, the child's siblings, the child's parents, guardian, or legal custodian, or any other person residing in the same dwelling as the child.

7. Disclosure of the information would reveal the identity of the person who reported the suspected abuse or neglect that caused the child fatality or near fatality or any other person who provides information relating to that suspected abuse or neglect.

The bill — disclosure required

Incidents of death or serious injury. This bill eliminates current law relating to disclosure to the general public of information about a child fatality or near fatality. Instead, the bill requires an agency that has reason to suspect that an incident of death or serious injury has occurred to provide to the subunit of DCF responsible for statewide oversight of child abuse and neglect programs, within two working days after determining that such an incident is suspected to have occurred, the age, gender, and race or ethnicity of the child; the date of the incident; the suspected cause of the death or serious ~~or critical condition of the child~~ ^{injury}; a brief history of the child welfare services offered or provided to the child, members of the child's family, and the person suspected of the abuse or neglect; a statement of whether the child was placed in his or her home or outside the home when the incident occurred; and the identity of any law enforcement agency that referred the report of the incident to the agency and of any law enforcement agency, district attorney, or other officer or agency to which the agency referred the report of the incident.

The subunit of DCF then is required to disclose to the public, within two working days after receiving that information, the fact that the subunit has received the information; whether DCF is conducting an investigation of the incident and, if so, the scope of the investigation and the identities of any other agencies with which DCF is cooperating in conducting the investigation; whether the child was placed in the home or in an out-of-home placement at the time of the incident; and information about the child, including the age, gender, and race or ethnicity of the child.

Within 90 days after receiving the information, the subunit of DCF must prepare and make available to the public a summary report about the incident. That subunit may also include in the summary report a summary of any changes in policies or practices that have been made to address any issues raised in the investigation and recommendations for any further changes in policies, practices, rules, or statutes that may be needed to address those issues. If the subunit does not include those changes and recommended changes in the summary report, the subunit must prepare and make available to the public a report of those changes and recommended changes within six months after receiving the information.

If the child was placed in his or her home when the incident of death or serious injury occurred, the summary report must contain all of the following:

1. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the incident, a description of any special needs of the child.

2. A statement of whether any child welfare services were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact between the agency providing those services and the person receiving those services.

3. A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in receiving child welfare services in the five years preceding the date of the incident.

4. A summary of any actions taken by the agency with respect to the child, any member of the child's family, and the person suspected of the abuse or neglect, including any referrals by the agency of any of those persons for services.

5. The date of the incident and the suspected cause of the death or serious ~~critical condition of the child~~ ^{injury}, as reported by the agency.

6. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury has occurred, including any material circumstances leading to the death or serious or critical condition of the child.

7. A summary of any services that have been provided to the child's family since the date of the incident.

If the child was placed in an out-of-home placement at the time of the incident of death or serious injury, the summary report must contain all of the following:

1. Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the incident, a description of any special needs of the child.

2. A description of the out-of-home placement, including the basis for the decision to place the child in that placement.

3. A description of all other persons residing in the out-of-home placement.

4. The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure or rules promulgated by DCF and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.

5. The date of the incident and the suspected cause of the death or serious ~~critical condition of the child~~ ^{injury}, as reported by the agency.

6. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury has occurred, including any material circumstances leading to the death or serious or critical condition of the child.

Incidents of egregious abuse or neglect. Under current law, each agency that receives or investigates a report of suspected child abuse or neglect must provide DCF with information about each report that it receives or investigation that it conducts.

This bill requires the subunit of DCF that receives information from an agency about an incident of egregious abuse or neglect, within two working days after receiving the information, to disclose to a child fatality review team, a citizen review panel, and, in Milwaukee County, the Milwaukee child welfare partnership council the same information that must be disclosed to the public by that subunit within two working days after receiving information about an incident of death or serious injury. That subunit must also disclose that information to any other person on request.

Incidents of sexual abuse by a caregiver. Current law requires DCF to submit an annual report to the governor and the legislature on the status of the child abuse and neglect programs administered by DCF. The report must include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of the child abuse and neglect services offered by DCF and their effectiveness, and recommendations for additional legislation and other actions to fulfill the purposes of the child abuse and neglect reporting law.

This bill requires DCF, within 30 days after the end of each calendar quarter, to prepare and ~~make available to the public~~ ^{provide} a summary report of all reports received by DCF during that calendar quarter of incidents of sexual abuse by a caregiver. DCF must ~~make available~~ ^{provide} for each report included in the summary report ~~the same information that must be included in a summary report of an incident of death or serious injury of a child placed in out-of-home care.~~ ^{transmit to the governor and to the appropriate standing committees of the legislature}

What disclosure is prohibited. A summary report of an incident of death or serious injury, a disclosure of information concerning an incident of egregious abuse or neglect, and a quarterly report of incidents of sexual abuse by a caregiver may not include any of the following:

1. Any information that would reveal the identity of the child who is the subject of the summary report, disclosure, or incident reported in the quarterly report, any member of the child's family, or any caregiver of the child.

~~any member of the child's household who is a child;
any member of the child's household who is a child;~~

2. Any information that would reveal the identity of ~~any member of the child's family~~ the person suspected of the abuse or neglect or any employee of any agency that provided child welfare services to the child or that participated in the investigation of the incident.

3. Any information that would reveal the identity of the reporter of the incident or of any other person who provides information relating to the incident.

4. Any information the disclosure of which is not authorized by state law or rule or federal law or regulation.

When disclosure is prohibited. Finally, under the bill, the subunit of DCF that prepares a summary report of an incident of death or serious injury, a disclosure of information concerning an incident of egregious abuse or neglect, or a quarterly report of incidents of sexual abuse by a caregiver may not make the summary report or disclosure available to the public or include any information about an incident of sexual abuse by a caregiver in the quarterly report if the subunit determines that making the summary report or disclosure available or including the information in the quarterly report would jeopardize: 1) any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial; or 2) any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.981 (7) (cr) of the statutes is repealed and recreated to read:

48.981 (7) (cr) 1. In this paragraph:

a. "Incident of death or serious injury" means an incident in which a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section or in which a child who has been placed outside the home by a court order under this chapter or ch. 938 is suspected to have committed suicide.

b. "Incident of egregious abuse or neglect" means an incident of suspected abuse or neglect that has been reported under this section, other than an incident of death or serious injury, involving significant violence, torture, multiple victims,

1 the use of inappropriate or cruel restraints, exposure of a child to a dangerous
2 situation, or other similar, aggravated circumstances.

3 2. Notwithstanding par. (a), if an agency that receives a report under sub. (3)
4 has reason to suspect that an incident of death or serious injury has occurred, within
5 2 working days after determining that such an incident is suspected to have occurred
6 the agency shall provide all of the following information to the subunit of the
7 department responsible for statewide oversight of child abuse and neglect programs:

8 a. The name of the agency and the name of a contact person at the agency.

9 b. Information about the child, including the age, gender, and race or ethnicity
10 of the child.

11 c. The date of the incident and the suspected cause of the death or serious
12 critical condition of the child.

13 d. A brief history of the services under this chapter offered or provided to the
14 child, members of the child's family, and the person suspected of the abuse or neglect.

15 e. A statement of whether the child was placed in his or her home or outside
16 the home when the incident occurred.

17 f. The identity of any law enforcement agency that referred the report of the
18 incident and of any law enforcement agency, district attorney, or other officer or
19 agency to which the report of the incident was referred.

20 3. a. Within 2 working days after receiving the information provided under
21 subd. 2., the subunit of the department that received the information shall disclose
22 to the public the fact that the subunit has received the information; whether the
23 department is conducting an investigation of the incident and, if so, the scope of the
24 investigation and the identities of any other agencies with which the department is
25 cooperating in conducting the investigation; whether the child was placed in the

1 home or in an out-of-home placement at the time of the incident; and information
2 about the child, including the age, gender, and race or ethnicity of the child.

3 b. Within 90 days after receiving the information provided under subd. 2., the
4 subunit of the department that received the information shall prepare and make
5 available to the public a summary report that contains the information specified in
6 subd. 4. or 5., whichever is applicable. That subunit may also include in the summary
7 report a summary of any changes in policies or practices that have been made to
8 address any issues raised in the investigation and recommendations for any further
9 changes in policies, practices, rules, or statutes that may be needed to address those
10 issues. If the subunit does not include those changes and recommended changes in
11 the summary report, the subunit shall prepare and make available to the public a
12 report of those changes and recommended changes within 6 months after receiving
13 the information provided under subd. 2.

14 4. If the child was placed in his or her home when the incident of death or
15 serious injury occurred, the summary report under subd. 3. shall contain all of the
16 following:

17 a. Information about the child, including the age, gender, and race or ethnicity
18 of the child, a description of the child's family, and, if relevant to the incident, a
19 description of any special needs of the child.

20 b. A statement of whether any services under this chapter were being provided
21 to the child, any member of the child's family, or the person suspected of the abuse
22 or neglect, or whether any of those persons was the subject of a referral to the agency
23 for services, at the time of the incident and, if so, the date of the last contact between
24 the agency providing those services and the person receiving those services.

1 c. A summary of all involvement of the child's parents and of the person
2 suspected of the abuse or neglect in receiving services under this chapter in the 5
3 years preceding the date of the incident.

4 d. A summary of any actions taken by the agency with respect to the child, any
5 member of the child's family, and the person suspected of the abuse or neglect,
6 including any referrals by the agency of any of those persons for services.

7 e. The date of the incident and the suspected cause of the death or serious ~~or~~
8 ~~critical condition~~ ^{injury} of the child, as reported by the agency under subd. 2. c.

9 f. The findings on which the agency bases its reasonable suspicion that an
10 incident of death or serious injury has occurred, including any material
11 circumstances leading to the death or serious or critical condition of the child.

12 g. A summary of any services that have been provided to the child's family since
13 the date of the incident.

14 5. If the child was placed in an out-of-home placement at the time of the
15 incident of death or serious injury, the summary report under subd. 3. shall contain
16 all of the following:

17 a. Information about the child, including the age, gender, and race or ethnicity
18 of the child and, if relevant to the incident, a description of any special needs of the
19 child.

20 b. A description of the out-of-home placement, including the basis for the
21 decision to place the child in that placement.

22 c. A description of all other persons residing in the out-of-home placement.

23 d. The licensing history of the out-of-home placement, including the type of
24 license held by the operator of the placement, the period for which the placement has
25 been licensed, and a summary of all violations by the licensee of any provisions of

1 licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67
2 and of any other actions by the licensee or an employee of the licensee that constitute
3 a substantial failure to protect and promote the health, safety, and welfare of a child.

4 e. The date of the incident and the suspected cause of the death or serious ~~critical condition~~^{injury} of the child, as reported by the agency under subd. 2. c.

6 f. The findings on which the agency bases its reasonable suspicion that an
7 incident of death or serious injury has occurred, including any material
8 circumstances leading to the death or serious or critical condition of the child.

9 6. Within 2 working days after receiving information under sub. (3) (c) 8. about
10 an incident of egregious abuse or neglect, the subunit of the department that receives
11 the information shall disclose to a child fatality review team, as described in par. (a)
12 15., a citizen review panel, as described in par. (a) 16., and, in a county having a
13 population of 500,000 or more, the Milwaukee child welfare partnership council the
14 fact that the subunit has received the information; whether the department is
15 conducting an investigation of the incident and, if so, the scope of the investigation
16 and the identities of any other agencies with which the department is cooperating
17 in conducting the investigation; whether the child was placed in the home or in an
18 out-of-home placement at the time of the incident; and information about the child,
19 including the age, gender, and race or ethnicity of the child. That subunit shall also
20 disclose that information to any other person on request.

21 7. A summary report under subd. 3. or a disclosure under subd. 6. may not
22 include any of the following:

23 a. Any information that would reveal the identity of the child who is the subject
24 of the summary report or disclosure, any member of the child's family, or any
25 caregiver of the child.

any member of the child's household who is a child

1 b. Any information that would reveal the identity of ~~any member of the child's~~
2 ~~family~~ the person suspected of the abuse or neglect, or any employee of any agency
3 that provided services under this chapter to the child or that participated in the
4 investigation of the incident of death or serious injury or the incident of egregious
5 abuse or neglect.

6 c. Any information that would reveal the identity of a reporter or of any other
7 person who provides information relating to the incident of death or serious injury
8 or the incident of egregious abuse or neglect.

9 ~~e~~ Any information the disclosure of which is not authorized by state law or rule
10 or federal law or regulation.

11 8. The subunit of the department that prepares a summary report under subd.
12 3. or that makes a disclosure under subd. 6. may not make the summary report or
13 disclosure available to the public if the subunit determines that making the
14 summary report or disclosure available to the public would jeopardize any of the
15 following:

16 a. Any ongoing or future criminal investigation or prosecution or a defendant's
17 right to a fair trial.

18 b. Any ongoing or future civil investigation or proceeding or the fairness of such
19 a proceeding.

20 9. If the department fails to disclose to the public any information that the
21 department is required to disclose under this paragraph, any person may request the
22 department to disclose that information. If the person's request is denied, the person
23 may petition the court to order the disclosure of that information. On receiving a
24 petition under this subdivision, the court shall notify the department, the agency, the
25 district attorney, the child, and the child's parent, guardian, or legal custodian of the

petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 7. or 8. apply.

10. Any person acting in good faith in providing information under subd. 2. or in preparing, transmitting, or making available a summary report under subd. 3. or a disclosure under subd. 6. is immune from any liability, civil or criminal, that may result by reason of those actions. For purposes of any proceeding, civil or criminal, the good faith of a person in providing information under subd. 2. or in preparing, transmitting, or making available a summary report under subd. 3. or a disclosure under subd. 6. shall be presumed.

SECTION 2. 48.981 (9) (title) of the statutes is amended to read:

48.981 (9) (title) ANNUAL AND QUARTERLY REPORTS.

SECTION 3. 48.981 (9) of the statutes is renumbered 48.981 (9) (a).

SECTION 4. 48.981 (9) (a) (title) of the statutes is created to read:

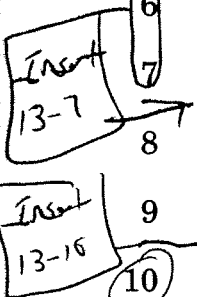
48.981 (9) (a) (title) *Annual reports.*

SECTION 5. 48.981 (9) (b) of the statutes is created to read:

48.981 (9) (b) *Quarterly reports.* Within 30 days after the end of each calendar

quarter, the department shall prepare and ~~make available to the public~~ a summary report of all reports received by the department under sub. (3) (c) 8. during that calendar quarter of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed in the home of a foster parent, treatment foster parent, or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth by that foster parent, treatment foster parent, or relative, by any other person

transmit to the governor and to the appropriate standing committees of the legislature under 139.72(3)

1 who resides in the home of the foster parent, treatment foster parent, or relative, by
2 any relative of the foster parent, treatment foster parent, or relative, or by any
3 employee, contractor, or volunteer of the group home, shelter care facility, or
4 residential care center for children and youth. The department shall ~~make available~~
5 ~~for each report included in the summary report the information specified in sub. (7)~~
6 (cr) 5. a. to d., the date of the incident of abuse, and the findings on which the agency
7 ~~bases its reasonable suspicion that abuse has occurred, but may not make available~~
8 any of the information specified in sub. (7) (cr) 7. or any information that would
9 jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 8. a.
10 or b. 

11 SECTION 6. Initial applicability.

12 (1) INCIDENT REPORTING. This act first applies to an incident of death or serious
13 injury, as defined in section 48.981 (7) (cr) 1. a. of the statutes, or an incident of
14 egregious abuse or neglect, as defined in section 48.981 (7) (cr) 1. b. of the statutes,
15 that occurs on the effective date of this subsection.

16 SECTION 7. Effective date.

17 (1) INCIDENT REPORTING. This act takes effect on the first day of the 3rd month
18 beginning after publication.

19 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2744/P2ins
GMM.....

(INSERT 11-8)

1 ⁹d. Any information the disclosure of which would not be in the best interests
2 of the child who is the subject of the summary report or disclosure, any member of
3 the child's family, any member of the child's household who is a child, or any caregiver
4 of the child, as determined by the subunit of the department that received the
5 information, after consultation with the agency that reported the incident of death
6 or serious injury or the incident of egregious abuse or neglect and the district
7 attorney and court of the county in which the incident occurred, and after balancing
8 the interest of the child, family or household member, or caregiver in avoiding the
9 stigma that might result from disclosure against the interest of the public in
10 obtaining that information.

(END OF INSERT)

(INSERT 13-7)

11 ^{No} provide for each report included in the summary report the number of incidents
12 of abuse reported, the dates of those incidents, the county in which those incidents
13 occurred, the age or age group of the child who is the subject of the report, the type
14 of placement in which the child was placed at the time of the incident, whether it was
15 determined under sub. (3) (c) 4. that abuse occurred, and whether the abuse resulted
16 in injury, disease, or pregnancy, but may not provide

(END OF INSERT)

(INSERT 13-10)

17 ^{No} Those committees shall review all summary reports transmitted under this
18 paragraph, conduct public hearings on those summary reports no less often than

1 annually, and submit recommendations to the department regarding those summary
2 reports. The department shall also make those summary reports available to the
3 public.

(END OF INSERT)

(INSERT A-1)

¹⁰ the number of incidents of abuse reported, the dates of those incidents, the
county in which those incidents occurred, the age or age group of the child who is the
subject of the report, the type of placement in which the child was placed at the time
of the incident, whether it was determined under the child abuse reporting law that
abuse occurred, and whether the abuse resulted in injury, disease, or pregnancy.
Those standing committees must review all summary reports transmitted to those
committees, conduct public hearings on those summary reports no less often than
annually, and submit recommendations to DCF regarding those summary reports.
DCF must also make those summary reports available to the public.

(END OF INSERT)

(INSERT A-2)

4. Any information the disclosure of which would not be in the best interests
of the child who is the subject of the summary report, disclosure or quarterly report,
any member of the child's family, any member of the child's household who is a child,
or any caregiver of the child, as determined by the subunit of DCF that received the
information, after consultation with the agency that reported the incident of death
or serious injury or the incident of egregious abuse or neglect and the district
attorney and juvenile court of the county in which the incident occurred, and after
balancing the interest of the child, family or household member, or caregiver in
avoiding the stigma that might result from disclosure against the interest of the
public in obtaining that information.

(END OF INSERT)

Malaise, Gordon

From: Sappenfield, Anne
Sent: Friday, September 04, 2009 11:42 AM
To: Malaise, Gordon
Cc: Kahn, Carrie; McGinnis, Cindy
Subject: LRB-2744/P2

Hi Gordon,

Rep. Grigsby and Sen. Jauch would like to have LRB-2744/P2 drafted as a /1 with some changes:

- Treat disclosure of information relating to incidents of egregious abuse or neglect the same as disclosure of incidents of death or serious injury.
- ✍ On p. 7, lines 19-20, only require the agency to report the age of the child.
- ✍ On p. 8, line 1, replace "placed" with "residing" since the term "placed" implies that the child is under a court order. Also, add "was placed" before "outside the home".
- ✍ On p. 8, lines 9, 10, 11 and 19 and, replace "investigation" with "review". Also, on line 11, add "at that point" after "cooperating in conducting the review" to reflect that DCF may cooperate with additional agencies at a later point.
- ✍ On p. 9, line 1, replace "child was placed in" with "child's residence was" because of what "placement" implies, again.
- ✍ On p. 13, line 19-20, "that calendar quarter" should be replaced with "the previous calendar quarter".
- Does SEC. 5 need to be double drafted because there are references to treatment foster homes? yes

Thank you, and please let me know if you have questions, etc... Have a great weekend!

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
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